

Service Date: January 27, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	UTILITY DIVISION
U S WEST Communications, Inc. and)	
Montana Wireless, Inc. Pursuant to)	DOCKET NO. D97.9.168
Section 252(e) of the Telecommunications)	
Act of 1996 for Approval of their)	ORDER NO. 6031a
Interconnection Agreements.)	

ORDER APPROVING AMENDMENT NO. 1 TO
WIRELINE INTERCONNECTION AGREEMENT

I. Introduction and Background

The Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 56 (1996), sets forth the foundation by which local competition may be encouraged in local exchange markets. U S WEST Communications, Inc. (U S WEST) and Montana Wireless, Inc. (MWI) negotiated agreements for interconnection and related services pursuant to the 1996 Act, and filed the executed agreements with the Montana Public Service Commission (Commission) on September 11, 1997 as required by § 252 of the Act.

MWI and U S WEST entered into two separate interconnection agreements, one being a combined agreement for resale and access to unbundled network elements entitled "Interconnection Agreement Between U S WEST Communications, Inc. and Montana Wireless, Inc. for Montana" (Wireline Agreement), and the second agreement for the interconnection of wireless services entitled "Wireless Interconnection Agreement Between U S WEST Communications, Inc. and Montana Wireless, Inc." (Wireless Agreement). On December 1, 1997, the Commission approved both the Wireline and Wireless Agreements in Order No. 6031 in this Docket, after giving interested persons an opportunity to intervene and comment on them. See Notice of Application For Approval of Interconnection Agreements and Opportunity To Intervene and Comment, Docket No. D97.9.168 (Sept. 16, 1997). No comments or requests to intervene were received by the Commission.

Pursuant to § 252(e)(2)(A) of the 1996 Act, the Commission approved the Wireless Agreement as filed. The Commission also approved the Wireline Agreement, but rejected certain provisions which did not conform to the standards required by the Act.

On December 31, 1997, MWI filed an executed amendment to the Wireline Agreement.

II. Findings of Fact and Commission Decision

1. The Commission rejected the following terms in Order No.6031:

a. Dispute Resolution - The Commission rejected § 26.18.2 pertaining to resolution of claims, controversies or other disputes which cannot be settled through negotiation.

The Commission rejected this contract provision because it did not provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator.

The Commission concluded that the public interest and the facilitation of market entry is better served by such notification. The Commission further stated that the parties could amend this section of the Wireline Agreement to include this language.

b. Payment - The Commission also rejected § 11.10.5 because service to MWI's end user customers could be disconnected through no fault on their part and with no advance notice to the Commission. The Commission stated that it could take appropriate action if notified of a pending termination of service to MWI's customers. The Commission rejected § 11.10.5 because it is not consistent with the public interest to permit U S WEST to terminate service to MWI's end users with no notification to the Commission. The Commission further stated that the parties could amend this section of the Wireline Agreement to include a notification provision that allows for a reasonable notification to the Commission that will afford the Commission time in which to take any appropriate action to protect end users.

c. Construction - The Commission rejected § 11.5.7 of the Wireline Agreement because it was not consistent with the public interest and circumstances could arise where U S WEST is required by law to construct facilities. The Commission stated that the parties could agree to the terms in § 11.5.7 for instances where U S WEST is required to construct facilities and stated that the parties could amend this section of the Wireline Agreement to provide for those circumstances where U S WEST is required to construct facilities.

d. Regulatory Approval -- The Commission also rejected the first sentence in § 26.31 because it referred to review of the Wireline Agreement by the Federal Communications Commission and the 1996 Act provides for review by state commissions only. See 47 U.S.C. § 252.

2. MWI filed the parties' first amendment to the Wireline Agreement, entitled "Amendment No. 1," on December 31, 1998. Amendment No. 1 includes revisions to the Wireline Agreement based on the concerns identified by the Commission in Order No. 6031.

3. Construction - Amendment No. 1 does not contain an amended • 11.5.7. It simply states that the Commission did not approve • 11.5.7 and that the Commission opined that, "There

may be circumstances which arise where U S WEST is required by law to construct facilities." Section 11.5.7 remains stricken from the Wireline Agreement.

4. Payment - Amendment No. 1, as proposed by the parties, adds the following sentence at the end of • 11.10.5: "It is understood that U S WEST will provide the Commission with a duplicate copy of any notice of disconnection of all or substantially all of MWI's services provided under this Section 11." This is a somewhat anemic revision to the Wireline Agreement.

It is not what the Commission contemplated when it rejected the provision and it does not fully address the concerns that the Commission identified in Order No. 6031. The Commission approves § 11.10.5 with this revision, but will independently require U S WEST to notify the Commission immediately if it initiates action pursuant to this section.

5. Dispute Resolution - The parties have amended § 26.18.2 to add the following to the end of the clause: "The Parties agree to promptly notify the Commission at the commencement of any arbitration regarding the issues to be arbitrated, and to promptly notify the Commission of any decision issued by an arbitrator pursuant to the terms of the Agreement." The Commission concludes that this amendment adequately addresses the concerns voiced in Order No. 6031 and should be approved.

III. Conclusions of Law

1. The Commission has authority to supervise, regulate, and control public utilities. See § 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunication services in the State of Montana and MWI will be regulated when it provides the same. See § 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. See • 69-3-103, MCA.

3. The Commission has jurisdiction to approve or reject the interconnection agreements (or portions thereof) negotiated between MWI and U S WEST and submitted to the Commission according to the standards set forth in 47 U.S. § 252(e)(2)(A). Section 69-3-103, MCA.

IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that

1. Amendment No. 1 to the Wireline Interconnection Agreement between U S WEST Communications, Inc. and Montana Wireless, Inc. is approved as discussed herein; and

2. U S WEST shall notify the Commission within five days of initiating any action pursuant to 11.10.5 of the Wireline Agreement.

DONE AND DATED this 13th day of January, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.